

Rules, Power and Constitutions
Following Onuf

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Constitutionalism is most often associated with law, or rather the rule of law. As a result, constitutionalism becomes an ideology of limits, the limits that law imposes on social and political life. This modern understanding derives in large part from the politics of the written constitution, where purposefully putting form to a political order and enacting that in a public way has become more widely accepted (McIlwain 2008 [1958]). For those interested in the relationship of constitutionalism to international affairs, this assumption means turning to international law as the location for an international or global constitutional order (Klabbers, Peters, Ulfstein 2009; Dunoff and Trachman 2009). For others it means locating constitutionalism in international organizations such as the UN (Fassbender 2009).

But law and legalization are not the only dimensions of constitutionalism. To constitute means to create, to empower, to give life to institutional forms and structures. The strong emphasis on law throughout the literature on global constitutionalism, and constitutionalism more generally, tends to obscure the importance of power, particularly the constituent power at the basis of modern constitutional thought. This chapter explores the relationship between law and power through an engagement with the work of Nicholas Onuf. Onuf's seminal work of international relations and law, *World of Our Making* (2013 [1989]) explores the nature of rules and laws in the construction of international affairs. It well deserves its status as one of the ur-texts of constructivism in international relations, for it helped frame many efforts to explore the nature of constructed political life through its engagement with the idea of a rule, drawing on social and linguistic philosophy to understand how rules construct and bind agents by means of heteronomy, the Kantian idea of being

bound by rules that lack a formal enforcement mechanism. Onuf's conclusions in *World of Our Making* arose, in part, from his engagements with international legal theory (Onuf 2008). His analysis of the sources of law, law making, enforcement and the intersection of social and legal theory in understanding the international legal order deserve greater attention, which in part this chapter is intended to provide.

In his published work, Onuf moved from questions of rule and law to a different, albeit related strand of work, that concerning republicanism. In 1998 he produced yet another ground breaking work, one that moved out of debates in constructivist IR theory and toward international political theory: *The Republican Legacy in International Thought*. Republicanism, like constitutionalism, has many trajectories, but Onuf explores an international republican ideal through an engagement with three key figures: Aristotle, Vattel, and Kant. Republicanism for Onuf echoes some of his earlier concerns, for as Aristotle famously said, to be political is to know how to rule and be ruled.

In between these moments of constructivism and republicanism, nestled quietly in the sphere of international legal theory, Onuf published an essay entitled 'The Constitution of International Society' (1994). The article, published in the then newly launched *European Journal of International Law*, was reprinted in *The Republican Legacy in International Thought*. In his collection of essays on international law, Onuf describes the origins of the essay as a bridge between his work in international relations and international law. It had a second purpose, though, which Onuf describes as an effort to correct a too strong emphasis on discourse which had led scholars to neglect 'the structural properties of constitutions' (Onuf 2008: 295). The move to the constitutional in Onuf's work represents a transformation from a focus on rules and constructivism to a focus on republicanism and institutions. For it is a constitution that locates law within institutions and yet also constitutes a legal order that

can construct those institutions. A constitution provides the bridge between rules and institutions.

But to move from rules to institutions requires something that remains unexplored in much of the literature on international and global constitutionalism. It is power that makes law and institutions possible, and it is power that provides the origin of a constitution at its moment of founding. The particular form of power in modern constitutionalism that provides this bridge is constituent power, also known as *pouvoir constituant*. The power of the people, the coming together of individuals who formally agree to reorganize themselves and consciously live under the rule of law can be found in multiple domestic settings. From the American and French revolutions to the Arab Spring, constituent power appears often on the nightly news. Yet there appears to be no such moment at the global level. Of course, the Occupy Movements that arose in response to the 2008 financial crisis might be one version of an emerging constituent power, though this and previous movements against global capitalism have failed to construct a new constitutional order. Others might locate such constituent power in states coming together to constitute new institutions, such as the founding of the League of Nations or the United Nations. Yet others might see constituent moments in cosmopolitan driven ideals that manifest themselves in activist NGOs seeking to drive forward particular agendas in diverse legal and political realms.

Locating such constituent moments in the international is difficult, to be sure, but not impossible. I argue that finding and labelling such moments should perhaps be the next stage in the research agendas of constructivist and legal scholars around the world. In that vein, this chapter will seek to do two things: First, it will describe Onuf's transition from rules and constructivism to rule and republicanism. In so doing, I will highlight the role that constitutionalism plays in Onuf's ideas, focusing on the essay noted above. Second, I wish to see if the path revealed by Onuf's brush clearing might lead us toward the neglected element

of power and particularly constituent power in international affairs. To do this, I turn briefly to a different theorist of republicanism, Hannah Arendt, and explore how her arguments in *On Revolution* (1963) connect with Onuf and yet also supplement his understanding of power, constitutionalism, and change. Onuf has led us to down a path that demonstrates how the international can be constituted by rules and institutions. This chapter follows that path, but turns it toward a different kind of constitutionalism, one in which constituent power points toward moments of global constitutionalism.

Onuf on Rules

Onuf is known to all scholars of International Relations for his seminal contribution to constructivism. In *World of Our Making*, he explored the nature of rules and rule. He argued that there is not an anarchic realm in the sense assumed by many IR scholars, but that scholars should be attending to the ways in which rules arise from linguistic conventions and categories..

The relevance of this work for what I want to argue concerns its formulation of the relationship between rules and laws. H.L.A. Hart provides one such link, famously arguing that rules become laws when secondary rules exist – those defining how primary rules are made. The interaction of the two types of rules creates something like a constitutional order (Hart 1994). In his discussion of Hart, Onuf hints at how he understands the relationship of law and constitutions. He recalls that Hart's account sees international law as law because there is a form of secondary rules in the doctrine of sources. Yet, Onuf then cites an article he wrote some years earlier as part of a project on global law making. In that article, reprinted in his collection of legal essays, he argues that the idea that there exists a clearly defined body of sources for international law, enumerated in Article 38 of the treaty establishing the International Court of Justice, is logically paradoxical. He notes, for instance, that the source of treaties might be better understood as a source founded in the legal idea of *pacta sunt*

servanda, or agreements must be kept. But, if this is a customary idea, what is its foundation? And does this relate to the supposed hierarchy of sources in positivist international legal theory? Rather than the standard list of sources, he suggests that there might be others, such as resolutions from the General Assembly (GA). He points to the Sixth Committee of the GA, which is tasked with the development of international law, as a location where global law making might actually take place. In a parenthetical note on the reprinted version from 2008, Onuf notes 'Looking back, I can see how naïve my hopes were' (Onuf 2008a [1974]: 97). This disillusionment with the ability of international law to be truly 'made' perhaps explains the line in *World of Our Making*, where he says: 'Better to say that the international order is legal to a degree that it would not be if it were to resemble a constitutional order' (Onuf 1989: 138).

In the 1974 analysis of global law making, Onuf suggests that there are three sources of a legal order: a social contract, consensus, or social imperative. Of these three, *World of Our Making* highlights the latter two as the most fruitful to explore as sources of the international legal order, for there has been no international or global social contract. As a result, *World of Our Making* is about how a kind of underlying consensus has produced the international order. Even more so, it is about how not just social imperative but, for want of a better world, a *logos* imperative creates our world. That is, it is the very nature of language and its construction of the world that creates our international legal and political order. The fact that we use language creates the fact that we have rules. And those rules are the foundation or the reality of law at the global level. Because there is no real or even imaginary constitution at the global level, we are left with rules that we did not author but which exist because our words have created them.

Onuf's wider legal writings also demonstrate how he came to see rules as the result of our language rather than our authorship. The first set of essays, roughly from the mid-

1960s through the early 1980s, engage with international legal theory as it existed in the American and European traditions. In another essay from this period, he addresses the question of reprisals, a traditional legal category to describe (and justify) the use of military force short of war (Onuf 2008b [1974b]). Rather than justify or explain reprisals in terms of natural right or natural law, Onuf re-envisioned the practice as a form of ritual. He turns to anthropological scholarship as a way to see such activities through a cultural lens. In this essay, Onuf comes to the very edge of what is possible in positivist legal theory and pushes the boundaries of that theory into new regions. The next period in his legal scholarship demonstrates how he moved from reacting to positivist theory to transcending it. This body of work, which he calls 'Social Theory and the Linguistic Turn' finds him making the move to the figures and ideas that constitute the structure of *World of Our Making*.

As a result, along with figures such as Friedrich Kratochwil (1989), Onuf pointed scholars to the function of rules in the conduct of international affairs. In so doing, he moved away from the concerns of realists and liberals alike, whose underlying assumptions were drawn from formal rule making, i.e. legal and constitutional theory. Because of the way that realists assumed politics and law related – i.e., that law arises from a formal deliberative political process leading to structures of authority and sanction that constrain individual interests – the lack of any law making or law enforcement mechanisms at the global level made the international system anarchic and incapable of being studied with the tools of domestic political theory (Wight 1964).

But in making the move away from law making, Onuf perhaps pointed constructivist theory down a path that did not envision a possible future in which a more formalized, or perhaps differently formalized, means of law making, law enforcement and judgement might be possible. For some, to even look in this direction is utopian, reflecting the late 19th and early 20th century efforts to turn liberal theory into institutions and codes that would recreate

the British political and legal order writ larger (or French, or German, or Dutch, depending on the colonial starting point). The constructivist literature that draws from Onuf tends to focus on this first part of *World or Our Making* where law results from rules that result from the *logos* imperative.

But Onuf did not write a book just about rules. The second half of the book, and indeed, much that followed, focuses on rule.

Onuf on Rule

The bulk of the second half of *World of Our Making* is devoted to how rules relate to the practice of ruling or how we govern ourselves. The focus of this part is on the Kantian idea of heteronomy, which sits between (or perhaps alongside of) the two traditional poles of political theory, hierarchy and anarchy. Onuf explores how heteronomy can conceptualize a form of rule that is not structured in the same way as a domestic political order and yet does not collapse into anarchy.

The argument here also resists relying on the dominant political science approach to questions of rule, i.e., power. Onuf notes that too many scholars deploy the term with little or no precision and so he declares that he will not use it. I return to this move below, but at this stage in his argument it helps him develop the idea of heteronomy and its relationship to ruling that is the focus of the book. Yet, as the book comes to its conclusion, Onuf circles round to a conclusion that parallels the realism from which he seeks to distance himself. This is not the realism of power politics or the state and its national interests. Instead, it is the pessimism of classical realism, one inflected through Marxism, which leads him to the following final thoughts:

In my view, rule is exploitative. If there are three categories of rule, then there are three forms of exploitation. If rule is inevitable – a position I think follows from the logic of rules and rule – then so is exploitation. The mitigation of exploitation in one form compels or promotes its presence in some other form.... There is no solution to the human reality of exploitation. Onuf 1989: 288-289

This conclusion is surprising, both in light of what preceded it and in light of the way that constructivist scholarship tends to avoid the pessimism found in most classical realism. This is not to say Onuf is incorrect here, only that the formulation of this position stands counter to the potential of a heteronomy that might have enabled a different form of rule, which by its social necessity would mean it reflected social needs and perhaps even social values. Instead, on connecting his conception of rules and rule with a discussion of rationality and resources (the focus of the concluding chapter) we are left with an Onuf who sounds like a combination of Marx, Morgenthau and perhaps Niebuhr (without Christian salvation to temper him).

Onuf's reflections on rule did not end with this book, of course. The next step in his intellectual trajectory saw the development of a theory of republicanism. This shift began soon after *World of Our Making*, saw a foray into the founding period of the American republic and came to its fruition in his international political theory work, *The Republican Legacy in International Thought* (1998). Onuf's republicanism is both an inheritance of the ancients and also, as with all his work, a significant reworking of that inheritance. His republicanism builds on J.G.A. Pocock's account, especially in the influence of the republicanism of Aristotle and Machiavelli on the American Founders (Pocock 1975). But he notes that Pocock's republicanism fails to connect it to the international, which Onuf does by engaging the work of the 18th century diplomat and theorist of law, Emer de Vattel. Onuf develops an understanding of republicanism in both the domestic and the international that highlights a spatial dimension, leading him to focus on federalism in the American constitution and the *civitas maxima* of Christian Wolf, who provided the intellectual foundation on which Vattel developed his account. Vattel famously saw Europe as such a *civitas*, a city where virtue could flourish in accordance with the ancient ideals of Aristotle, Cicero and Machiavelli (Vattel 2008 [1758]). In that *civitas*, a kind of constitutional order

emerges, one that allows large and small states to exist without threat to each other. It is an ideal composed of a whole (Europe) and parts (states).

The republican idea finds its way into Onuf's two co-written historical studies of the American political order. In these works, written with his brother Peter Onuf – a historian of early America whose focus has been on Jefferson – Onuf develops an interesting understanding of the American constitution. In the first volume, *Federal Union, Modern World* (Onuf and Onuf 1993), they argue that there is a direct overlap between the ideas that constituted the early American republic and that constituting the European, and eventually international, political order. The next volume, *Nations, Markets and War* (Onuf and Onuf, 2006) explores the intersection of this republican heritage with a modern, primarily liberal political discourse. This discourse they locate in Adam Smith, whose theorizations of the domestic and international realms contributes to the contractarian liberal order in which the market distributes wealth and in which we as individuals become consumers and participants in a market as opposed to citizens contributing to a defined political order. Again, the argument circles around a spatial set of relationships, the relation of the whole and the parts which constitutes Onuf's conception of the republican heritage of Aristotle.

Let me come back to Onuf's article, 'The Constitution of International Society' (1994). As noted above, this article appeared first in a journal (*European Journal of International Law*) then slightly revised in *The Republican Legacy in International Thought* (1998) and recently reprinted in his collected work of essays on legal theory (2008).¹ The essay is oriented around four terms – theory, rules, constitution and society. The first theme, theory, will not be the focus of my attention here. Rather, I want to focus on the other three terms and what they tell us about Onuf's understanding of constitutional and rule. Onuf

¹ Onuf is also on the Board of the journal *Global Constitutionalism*, though of course this does not commit him to a belief in any particular understanding of this term.

argues that rules constitute peoples and societies. This co-constitution process gives us our social and political reality at both the domestic and international levels. The first part of the essay speaks of this process not through a written constitution but through the social and political process that the Greeks, particularly Aristotle, would have called a constitution. That is, what Onuf describes first is closer to what Aristotle articulated in the Constitution of Athens – a descriptive account of how a social and political order comes to be through a focus on an array of institutional and rule based practices (Aristotle 1994). After reiterating some of his ideas about rules and their role in making political life, Onuf then turns again to the question of constitutions. In the latter part of the essay, he explores what he calls the ‘material constitution’ (a term he draws from the legal theorist Hans Kelsen) or actual written constitutions that have come to be the defining feature of constitutionalism in the 20th century. He refers to the American constitution in the words of James Madison as something designed to ensure that the rules cannot be changed: ‘The constitution’s rules must be formally articulated so as to make their status apparent, even if they are not included in a particular document materially identified as the constitution’ (Onuf 1994: 14). He then points to the fact that there is a material constitution in the international realm, the UN Charter. He explores the nature of this material constitution, highlighting how Chapter 1 of the Charter is the locus of a material constitution. For it is here, as Onuf argues, the Charter clarifies who ‘counts’ as a legitimate agent in the system and gives those agents general responsibilities in how they are to act. He focuses on Article 2(4) the famous directive for all states to avoid the use of military force in their interactions with each other. If the Charter and the material constitution of international society are based on the principle of peace, this fundamental *Grundnorm* (to use Kelsen’s famous idea) structures the international legal and constitutional order.

Onuf concludes the essay by noting that his focus on rules and society can result in a sort of conservatism, for it does not allow for the possibility of change. He suggests instead that change can come about in five ways: cumulative, legal, constitutional, revolutionary, and transformative. The first is sociological, describing the way a social system evolves through changes to its rules. The second is through legislation, a process that does not exist in a clearly defined way in the international legal order. The third comes from constitutions themselves, especially when they describe the amendment process. The fourth comes when 'self-empowered agents... dispose of the old constitution and introduce a new set of secondary rules reflecting a new distribution of power' (Onuf 1994: 19). And, finally, transformative change is when a larger, more constitutive set of changes take place, ones that redefine agents and order in more profound ways than the other four.

I want to focus more carefully on this process of change, particularly on the political dimension of that change. In the next section, I ask whether or not revolutionary or transformative change is possible in the international legal order and, crucially, what role power plays in this process of change.

The Power to Change

Onuf argues that transformative change is the most important, and, admittedly, the most difficult. He also notes that constitutional change is something that takes place through the structures and frameworks of the material constitution, i.e., through an amendment process. In the remainder of this essay, I want to move from Onuf and discuss the idea of revolutionary change, for it is in revolutionary change that the concept of power becomes most relevant. Understanding how revolutionary change can take place at the international level is complicated however. While there is a well-developed body of thought on how domestic revolutionary change takes place, there is less understanding of how such change takes place at the global level. So, in this last section, I want to suggest this potential by

exploring the idea of constituent power and seeing how it might serve to locate a place for power in global affairs that sees it as an enabling concept rather than a destructive one. In order to do that, I begin with Aristotle and move to Arendt.

Aristotle, on whom Onuf relies for his understanding of republicanism, explores the nature of ruling in the *Politics*. Onuf draws from Aristotle a spatial conception of ruling which is connected to the ideas of federalism found in both the American constitution and Vattel's ideas about the European political order. This insight allows Onuf to develop his argument that ruling should be understood through the spatial relations of parts and wholes. This links Onuf's republican thought *via* Aristotle to the international where formal, material constitutions are not as evident but spatial relations of sovereignty and balance of power are more so.

Aristotle did not just provide a theorization of spatial relations. His work provides proposals for how to avoid revolution, especially in Book V. Aristotle explains what causes revolution across all the types he identifies. As such, there are extended discussions with historical examples of how tyrants, democrats, oligarchs, aristocrats, and monarchs can avoid revolution. The causes that Aristotle identifies can be reduced to three: inequality, fear, and contempt. These causes can be countered through various methods, though in the best constitutional order the construction of greater equality prevents revolution. His discussion of revolution comes to a close with a critique of his teacher, Plato. He argues that Plato's *Republic* assumes that there will always be revolutions. In response, Aristotle argues that Plato's cyclical understanding of revolutionary politics imposes a fictional construct on what the specificities of different constitutional orders and what leads individuals to seek to overthrow them (Aristotle 1994: 151-152).

Like Onuf, Aristotle describes and analyses the systems that he finds in the world in which he lives. He constructs a theory that will demonstrate how to avoid change. Onuf is less conservative than Aristotle on this point, as his international legal work demonstrates. Rather than conservatism, what Onuf takes from Aristotle here is a resistance to looking at the ways in which revolutions might be necessary and good for the state and for the human person. At times, political orders must be overturned. For Aristotle, such change should be avoided in order to ensure a stable political system, even if that system is a tyrannical one. Indeed, parts of Book V sound like Machiavelli's efforts to describe how princes can keep their power rather than critically assessing how to create more just political systems. Again, this conservatism is not Onuf's, but it perhaps explains the reasons why revolutionary change plays a limited role in his understanding of the constitution of international society.

Onuf, along with his brother, did explore a revolutionary situation, that of the founding of the United States. But their account of this famous revolutionary moment strangely leaves out discussions of revolutionary politics. Instead, its focus is on the construction of a constitution after the revolution (Onuf and Onuf 1994). They argue that this constitutional order paralleled and found inspiration in the larger republican thinking emerging at this time, especially in Vattel's formulations of balance of power and federal order. Power finds its way into Onuf's account of constitutions, but largely in the form of separation and balance rather than enablement and creation. Once more, this allows him to explain an existing order, whether it be the American constitution or the international system. What it does not do is provide a means to explore how power can be used to create a new constitution.

Revolutions take place in domestic politics not in international politics. Indeed, the lack of revolutions might explain Onuf's focus on transformative change rather than revolutionary change as the most important. Revolutionary change requires political agents

who have both a claim against the existing order, the power to act together, and the material from which to create a new order. None of this appears in the international order, or at least it does not appear in any clearly defined form. To find the potential for revolutionary change, for political power as something more than power politics, we need to reinterpret international politics or at least some elements of the international. We need to see in practices and events the potential for a constituent power when it may not be immediately evident, or when it may not look like it does in a domestic political context.

Some scholars have made this interpretive move, though it is somewhat nascent at this point (Niesen 2014, Thornhill 2012). In concluding this paper, I wish to make my own move toward the idea of constituent power by using the work of Hannah Arendt as a resource for locating revolutionary power and potential in the international order. The book that is most obvious here is *On Revolution*, Arendt's account of the French and American revolutions (Arendt 1963).² The book drew upon an idiosyncratic reading of those events to explore the relationship of political action and political institutions. It has also been subject to criticisms, particularly on her ideas of representation and constituent power (Negri 2009, Wellmer 2000) and her historical account of the American founding (Disch 2011). Some of these critiques are based on misunderstandings of the text, while others fail to grasp the wider project in which she was engaged. Her account of revolution is best seen in relation to her argument about political action, which she develops in *The Human Condition* (1958). She privileges action above other modes of human existence, suggesting in a very Aristotelian way that engaging in political life brings out what is best in the human person. Political action then creates the public sphere in which continued the human condition can be sustained.

² Some of what follows here draws on Lang 2014.

Arendt moves from conceiving of political action as occurring within a web of human relations to action within a *polis*. But political action, according to Arendt, cannot be confined within the walls of the *polis*. Political action is similar to a miracle – something one cannot expect and cannot contain. While the *polis* is an attempt to create a physical space for political action, action forces itself beyond those boundaries. In other words, Arendt leaves a space here for an international or better yet global political space, one not confined to a single community or territory but boundless in its energy and creative force.

The link between agency and the creation and functioning of political institutions is not fully developed in this work. The closest Arendt gets to how action results in institutions is where speaking and acting in public places us in a ‘web’ of relationships, a context that exists ‘between’ people: ‘Most action and speech is concerned with this in-between, which varies with each group of people, so that most words and deeds are about some worldly objective reality in addition to being a disclosure of the acting and speaking agent’ (Arendt 1958: 182). The elusive character of Arendt’s notion of political action in this text results not from her inability to theorize about institutions, as we shall see below. Rather, it results from her effort to reclaim the importance of political action and to prevent such actions becoming ossified into skeletons that can never change. For one of the most important aspects of political action for Arendt is its creative force, its ability to allow humans to begin new things. This ‘natality’ as she calls it defines the human condition in the political realm.

Based on this account of political action, Arendt found in revolution a concept that highlights the potential of an active political life, one that reflects the essential natality of the political. Arendt proceeds to redefine revolution, starting with Machiavelli as the ‘spiritual founder of revolution’ (Arendt 1963: 37). Arendt privileges the Machiavelli of the *Discourses* rather than of the *Prince*, for she highlights his understanding of revolution as an act of founding. She argues that political thought moved from Machiavelli’s focus on the ruler to a

change in the whole political order. The modern meaning of the term finds its origins in Copernicus' idea of the revolution of the planets (Arendt 1963: 42). This connected with emerging trends in natural law, particularly those accounts that looked to the natural world for insight into the human condition. The confluence of newly secularized natural law and the civil war in Britain shaped the meaning of revolution.

As Arendt highlights, the inevitability of the naturalist account underwent a subtle shift in the 18th century, particularly in the context of the French revolution. Its advocates no longer saw revolution as part of the nature of things, but as part of a historical progression, a new beginning that cannot be controlled. It moves from 'the lawfulness of a rotating, cyclical movement to its irresistibility' (Arendt 1963: 48-49). This new meaning intersects with historicist thinking in the 19th century, beginning with Hegel and continued by Marx. Their accounts found revolution to be part of a wider and longer historical process that left little room for the agency and natality of politics that Arendt highlighted in *The Human Condition*. Arendt argues the Hegelian and Marxian reading of the French Revolution is what shapes our understanding of the term, especially its valences of the inevitable and irresistible understood through the metaphors of 'currents', 'streams' and 'rivers'. Human agency is lost and all we can do is sit as spectators watching the flow of history: 'What the men of the Russian Revolution had learned from the French Revolution – and this learning constituted almost their entire preparation – was history and not action' (Arendt 1963: 58). In linking revolution first to the natural philosophy of the 17th century and then the historicism of the late 18th and early 19th century, Arendt suggests that perhaps the very idea of revolution cannot escape a kind of determinism, something that is, in fact, antithetical to the type of political agency that was at the core of her ideas. In a sense, Arendt wishes to reclaim the meaning of revolution from these accounts, although it remains questionable the extent to her project can succeed as

a result of the powerful influence these historicist readings have in our collective understanding of revolution.

Arendt explores the French and American revolutions, concluding that the American one captured the centrality of the political which the French revolution failed to embody (a conclusion that has led to misreadings of her account). She turns to Thomas Paine, the most radical of the American founders, to highlight what made these revolutions moments so different and important: 'A constitution is not the act of a government but of a people constituting a government' (Arendt 1963: 145). But what differentiated the American and French revolutions can be seen in the influence Montesquieu on the Americans, for it was Montesquieu's ideas that enabled the Americans to combine freedom and power by recognizing the need to limit the institutions of government. Rather than rely on law alone to check power, Montesquieu understood that 'Power can only be stopped and still be kept intact by power' (Arendt 1963: 151). Montesquieu and the American founders were not only interested in limiting power, a point misunderstood by libertarians and free market interpreters of the American experience.

Here Arendt finds a link with Onuf (or the Onufs, perhaps) when she highlights the importance of seeing constitutions and the creation of constitutions as the result of the republican tradition. In this book, more than any other, Arendt mirrors the republicanism that Onuf develops both in his studies of the American experience and in his reflections on the republican heritage in international relations. Arendt here can supplement Onuf by bringing forth the moment of founding, that revolutionary experience that plays such a crucial role in constitutional politics. And, like Onuf, she wishes to find how rule is made possible in republican constitutions.

Arendt argues that the power, the constituent power of the revolutionary moment, played very different roles in the ideas and practices of the French and American revolutions. In France, constituent power was seen to be the source of the law and constitutions; as such, its fluid and unstable nature resulted in constituent assemblies and constituents riven by conflict, resulting in instability throughout the 19th and even 20th centuries. The American experience, on the other hand, did not rely on constituent power to found its legal foundation, at least according to Arendt. Instead, the American founders drew on the idea of covenanting which they derived from the charters and common law traditions of England which they brought with them to found their order. Arendt argues that this heritage of common law and legal traditions gave the American experience something more worldly and stable upon which to found their constitutional order (Arendt 1963: 157).

Once more, we can find a link with Onuf. For Onuf, the centrality of the customary legal order as part of the material constitution of international society is built upon a historical tradition. The invocation of rulings by the ICJ and other judicial and political orders remains a crucial stabilizing influence when the international system undergoes any kind of change. Even the creation of new institutions such as the International Criminal Court or the United Nations draws upon ideas underlying treaties and traditional international legal processes. While the tradition of thought that Arendt finds in the American Revolution differs from that found underlying the material constitution of the international, there is a parallel in the importance of a historical grounding for both forms of change to lead to stable outcomes.

Arendt reads into the American experience a republican tradition. The American founders' reliance on the charters of the 17th century and the covenants of the Pilgrims reinforces these foundational elements, drawing on Ancient Israelite traditions rather than simply Classical ones. Their respect for the authority of tradition gives the American experience something that the French, with their desire to sweep away all vestiges of the old

order, failed to capture. Yet the American experience should not be confined to the authority of tradition, for Arendt reminds us that it was still a revolution, a break with the established order. It is the dialectic between the history of the tradition and the natality of the act of revolution that is at the core of Arendt's account of the American experience.

In the final chapter she suggests that there is a 'lost treasure' in the revolutionary tradition. The American founders sought to create permanence and durability in their institutions, which meant they failed to uphold the centrality of freedom and the force of political natality. When the founders moved to formalize the revolution in the creation of a constitution, they failed to leave space for the 'townships and the town-hall meetings, the original springs of all political activity in the country' (Arendt 1963: 239). In seeking to create national institutions through a constitutional assembly, the spirit of political action that had motivated the revolution in the first place was lost. Here Arendt turns back to the French Revolution's critique of representation.

In an interview from 1970, Arendt moves from her historical focus on the French and American revolutions to an assessment of the student movements of the 1960s. She begins by arguing that the movements reinforce one of her core claims – that public political protest demonstrates brings about a kind of public happiness (Arendt 1972: 202). After mildly critiquing the student movement for its turn toward universities rather than keeping focused on public political affairs, Arendt makes a move that helps us see her relevance for the international. In the concluding discussion with the interviewer, she translates her arguments about the joy of revolutionary activity and the importance of council politics into a discussion of international politics. Here she suggests that a series of global protest movements, stretching across different national contexts might unite into a kind of federated structure, one that might retain a council ethos but somehow become international. This global federal

structure could rely on local political councils, but no longer ones bound by the idea of sovereignty:

In this direction, I see the possibility of forming a new concept of the state. A council state of this sort, to which the principle of sovereignty would be wholly alien, would be admirably suited to federations of the most various kinds, especially because in it power would be constituted horizontally and not vertically. But if you ask me now what prospects it has of being realized, then I must say to you: Very slight, if at all. And yet, perhaps, after all – in the wake of the next revolution. Arendt 1972: 233

The potential for global political protest to emerge as a space of freedom and a way to capture the lost treasure of the revolution finds expression in this interview. As with the space left open for political action to turn global, this is not a carefully defined dimension of Arendt's thought. But it is intriguing nonetheless.

Arendt points to something that theorists of revolutions and politics have failed to see. The protests from the late 1990s against the WTO, the Occupy movements of the last few years, and the revolutionary dynamics of the Arab Spring all point to the continued importance of a revolutionary spirit that transcends boundaries (Lang 2005, Lang 2014). Even though such movements are oriented toward state building goals at times, or are animated by the moralism that Arendt disdained, they reflect the inherent 'joy' in political action that she sought to capture. They are also global in scope, reflecting and refracting different visions of political life, combining in ways that might surprise us if we are locked into a traditional theory of revolution, one that relies on the traditional conception of constituent power. Instead, they represent efforts to create new modes of freedom, new spaces of liberty. They are ongoing efforts, not confined to a single moment or place. Arendt's reflections on revolution may not be proved completely accurate, but it is undeniable that she brings forth a 'treasure' that continues to be found by new generations of activists around the world.

Onuf wisely avoided the realist obsession with power. But power need not be understood through the framework of Hans Morgenthau. Rather, power can be seen through

Arendt's lens, an enabling action that brings together different figures and constituents into a new moment of action. Revolutionary moments need not happen just within single states, but can be regional, international or global. The constitution of international society does not just result from the shared rules that make international law and politics possible; perhaps it results as well from political action purposefully undertaken in the hopes of creating new realities. The work of theorists such as James Tully suggest a way forward here; attending to struggles for indigenous rights or environmental justice might lead to a new form of citizenship which while perhaps not global is at least closer to the globe than the state (Tully 2008, Tully 2014).

This chapter should not be read as a critique of Onuf, although I realize I am highlighting a dimension of political life he has not explored to my liking. Rather, I see this as a chapter that is inspired by Onuf's creative republicanism. My republicanism highlights revolutionary change, cross border citizenship and global constitutionalism. I could not have found these ideas or been able to locate them in the supposedly anarchic world of international relations without the intellectual world(s) made by Nicholas Onuf.

